IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

SECOND APPEAL NO.930 OF 2006
A/W
Civil Application No.1299 of 2006

Shri Diwakar Dhulappa Birajdar
(Nandgaonkar), .. Appellant.
Vs
Shri Prabhakar Dhulappa Birajdar
(Nandgaonkar) and ors. .. Respondents.

Mr Sachin U Dhakephalkar, for the appellant.
Mr G.S.Godbole, for respondent nos. 1 and 2.

CORAM : D.B.BHOSALE,J.
DATE : 20.11.2006

PC:

1. Heard the learned counsel for the parties.

2. The only contention advanced in this second appeal against the concurrent findings of the courts below, is that the appellant was not given an opportunity to cross-examine the court commissioner, who had submitted his report in the final decree proceedings. I perused the judgment and in particular paragraph 10 of the judgment of the appeal court. From perusal of the aforesaid paragraph, it is clear that the appellant had not adduced any oral or documentary evidence and the matter was argued on merit. The Court Commissioner’s report was also not challenged before the executing authority, nor did the appellant seek permission to cross-examine the court commissioner

before the executing authority. In view thereof, the appeal court has rightly rejected the contention holding that such permission cannot be sought for the first time in appeal. Even from the perusal of the material placed before me, I do not see any prejudice being caused to the appellant for not being allowed to cross-examine the court commissioner. In the circumstances, keeping that in view and considering the concurrent findings of fact and as I find that there is sufficient material on record to sustain those findings and considering the extremely limited jurisdiction of this Court under section 100 of C.P.C to disturb the findings of fact, this appeal fails and is dismissed as such. As the consequence thereof, the civil application also stands dismissed.

(D.B.BHOSALE,J.)